

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RICKIE L. HILL

Case No. 3:14-cv-00680-RCJ-WGC

v

Petitioner,

ORDER

RENEE BAKER, et al.,

Respondents.

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On February 11, 2015, this court granted a stay and administratively closed petitioner Rickie L. Hill's federal habeas corpus action while he litigated his state petition (ECF No. 4).

18 Hill's further state-court proceedings have concluded, and he has now returned
19 to this court seeking to reopen this case (ECF No. 7). Good cause appearing, this
20 action is reopened. The petition shall be served on respondents.

21 A petition for federal habeas corpus should include all claims for relief of which
22 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
23 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
24 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
25 petition, he should notify the court of that as soon as possible, perhaps by means of a
26 motion to amend his petition to add the claim.

Petitioner has also filed a motion for appointment of counsel and a supplement to the motion (ECF Nos. 8 and 9). There is no constitutional right to appointed counsel for

1 a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987);
2 *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is
3 generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert.
4 denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert.
5 denied, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities
6 of the case are such that denial of counsel would amount to a denial of due process,
7 and where the petitioner is a person of such limited education as to be incapable of
8 fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v.*
9 *Bennett*, 423 F.2d 948 (8th Cir.1970). Here, the court notes that Hill is serving four
10 consecutive terms of ten years to life. However, his petition is clear in presenting the
11 issues that he wishes to raise, and the legal issues are not particularly complex.
12 Therefore, counsel is not justified at this time. Hill's motion is denied.

13 **IT IS THEREFORE ORDERED** that petitioner's motion to reopen this action (ECF
14 No. 7) is **GRANTED**.

15 **IT IS FURTHER ORDERED** that, as the stay is lifted by this order, the Clerk shall
16 REOPEN THE FILE in this action.

17 **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**
18 **SERVE** the petition (ECF No. 5) on the respondents.

19 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
20 Attorney General, as counsel for respondents.

21 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
22 and supplemental motion for appointment of counsel (ECF Nos. 8 and 9) are both
23 **DENIED**.

24 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
25 including potentially by motion to dismiss, within **ninety (90) days** of service of the
26 petition, with any requests for relief by petitioner by motion otherwise being subject to
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1 the normal briefing schedule under the local rules. Any response filed shall comply with
2 the remaining provisions below, which are entered pursuant to Habeas Rule 5.
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4 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
5 in this case shall be raised together in a single consolidated motion to dismiss. In other
6 words, the court does not wish to address any procedural defenses raised herein either
7 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
8 answer. Procedural defenses omitted from such motion to dismiss will be subject to
9 potential waiver. Respondents shall not file a response in this case that consolidates
10 their procedural defenses, if any, with their response on the merits, except pursuant to
11 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
12 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
13 do so within the single motion to dismiss not in the answer; and (b) they shall
14 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
15 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
16 procedural defenses, including exhaustion, shall be included with the merits in an
17 answer. All procedural defenses, including exhaustion, instead must be raised by
18 motion to dismiss.

19 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
20 shall specifically cite to and address the applicable state court written decision and state
21 court record materials, if any, regarding each claim within the response as to that claim.

22 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
23 service of the answer, motion to dismiss, or other response to file a reply or opposition,
24 with any other requests for relief by respondents by motion otherwise being subject to
25 the normal briefing schedule under the local rules.

26 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
27 herein by either petitioner or respondents shall be filed with a separate index of exhibits
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1 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
2 be identified by the number of the exhibit in the attachment.

3 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all
4 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed
5 to the attention of "Staff Attorney" on the outside of the mailing address label. Additionally,
6 in the future, all parties shall provide courtesy copies of any additional exhibits submitted
7 to the court in this case, in the manner described above.

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9 DATED: 12 April 2017.

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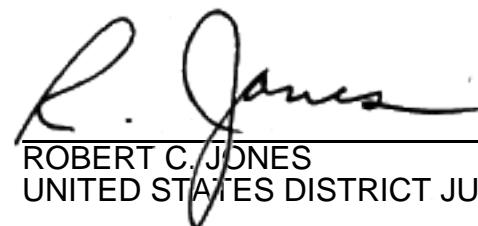
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ROBERT C. JONES
UNITED STATES DISTRICT JUDGE